Supreme Court. U.S.
FILED
06-540 JUL 17 2006
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

WACLAW M. TROJANEK,

Petitioner,

vs.

SAFEWAY INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals, State Of Arizona, Division One

PETITION FOR WRIT OF CERTIORARI

WACLAW M. TROJANEK
4428 W. Cholla
Glendale, Arizona 85304
602-938-8522

QUESTION PRESENTED

Whether the lower courts failed to allow Plaintiff the right to fully present his case, particularly the point of misidentification of plaintiff in surveillance tape, which lead to incorrect diagnosis by medical doctor. Plaintiff was unaware of the existence of surveillance tape therefore was not given opportunity to dispute due to all Motions for Review, and Reconsiderations, being denied and dismissed.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

WACLAW M. TROJANEK
Petitioner

THE INDUSTRIAL COMMISSION OF ARIZONA
Respondent

SAFEWAY INC.
Defendant Employer

SAFEWAY INC.
Defendant Insurance Carrier

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The order denying petitioner's motion for reconsideration and awarding respondent carrier taxable costs of the Court of Appeals of the State of Arizona of December 6, 2005, is unreported and is reproduced in the appendix at App. 1. The findings and award Before the Industrial Commission of Arizona dated January 31, 2005, is reproduced in the appendix at App. 7.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution amendment XIV.

STATEMENT OF THE CASE

Petitioner Employee Waclaw M. Trojanek sustained an industrial injury to his lower back on October 11, 2002. His claim for benefits was accepted by the self-insured employer, Safeway Stores Inc., by a notice of claim status

dated October 28, 2002, disability and medical benefits until February 15, 2003.

Safeway Inc. has employed appellant Waclaw M. Trojanek for 30 years. Appellant has exemplified a stellar career as Meat cutter/Manager, receiving numerous accolades and awards for exceptional performance from leadership. Appellant maintained a flawless attendance record for 30 years. Appellant has never claimed to have any lower back pain or back injury prior to the accident on October 11, 2002.

Appellant initially injured himself on the job on October 11, 2002, between 9:00 a.m. and 10:00 a.m. while working as a meat cutter for Safeway Inc. While cutting meat on the meat saw, the appellant picked up the cut meat and turned to the left stepping off the safety mat. Appellant immediately felt a sharp electric pain like shock that traveled throughout his body starting from his lower back then throughout the rest of his body. Appellant was instructed to attend physical therapy and rehabilitation for comprehensive lower back rehabilitation therapy by Dr. Zoran Maric the Industrial Physician. After a few weeks of therapy there was still no improvement. The only test that was approved by Safeway Industrial was an M.R.I. on appellant's lower back.

January 29, 2003 on appellant's follow-up visit with Dr. Zoran Maric MD. Appellants wife, Sophie Trojanek, and Ms. Jaclyn Rogers, Safeway Inc. Industrial case worker, were all present in the examination room. Appellant briefed Dr. Maric about the pain in his lower back being much worse after the physical therapy. Dr. Maric stated, "Everyone in America has a bulging disk. It should not hurt so much." With that Dr. Maric closed the

appellant under and walked out of the room in disgust. Amazed by Dr. Maric's unprofessional behavior appellant asked Ms. Jaclyn Rogers what was the next course of action to take. Ms. Rogers suggested contacting Liz Williams at Safeway Industrial Office for further guidance. Ms. Liz Williams was contacted later that day and to this date appellant has never received any guidance from Safeway's Industrial Office to include any assistance from Liz Williams.

Safeway Inc. and Safeway's Industrial Physician, Dr. Zoran Maric, closed the case on February 15, 2003, as petitioner's lower back Injury became worse.

Appellant was not aware of his Termination from Employment until February 20, 2003. Yet he was asked to return to his Employment on February 15, 2003. Appellant's Industrial Compensation ended on February 15, 2003. With all the stress from appellant's injury and lack of proper health care from Safeway Industrial Doctor, appellant underwent double bypass open heart surgery on February 18, 2003. Appellant was left to recuperate from lower back injury sustained on the job and open heart surgery without any income to provide for his family which was his wife and five children. Appellant was left with no alternative but to contact the Industrial Commission of Arizona. The Judge failed to examine all reports. She accepted the reports from the Industrial Dr. Zoran Maric and Safeway Inc. and closed the case.

Upon receiving documents from the appellants closed case, it was then identified by the appellant of the existence of a surveillance tape, made by Safeway Inc. The tape was used to assist Dr. Zoran Maric in his final report on the appellant. After his examination on January 29,

2003 Dr. Zoran Maric's report was vital for Safeway justifying appellant's termination of employment and termination of all benefits. Dr. Zoran Maric and Safeway Inc., misidentified and falsified the truth of appellant's physical abilities that are noted in the final report. The surveillance tape has been a major factor in closing this case. Nothing on the tape matched the reports by Dr. Zoran Maric and Safeway Inc.

In addition to appellants lower back injury received at work, I am suing Safeway Inc. for $45 Million Dollars for the unnecessary stress they continue to cause. My heart condition dating back from November 4, 1996, which started the last six years of my employment. The stress resulted from Age Discrimination, Nationality Discrimination, and accusations of theft including a cup of coffee and 2 soda pops. After my open heart surgery I never received compensation for my heart condition and as an American Citizen it is my right to sue the Employer. I will provide any and all documents necessary to validate the undue stress caused by Safeway Inc. This willful neglect on behalf of Safeway Inc. has caused inevitable stress that the appellant has dealt with dating back from November 4, 1996 to present. Appellant is dismayed to know that after 30 years of Employment this is how he would be treated. Appellant feels like he has been swept under the carpet like a piece of trash. Appellant had continually performed above standards in reaching company goals, which has been evident through his accomplishments handed down by management. It is unmistakable that Safeway Inc. continues to cause undue stress deteriorating appellant's health and well being by failing to accept responsibility for his injuries.

Appellant is an American citizen, Father of 12 children, and a Husband, who is unable to continue his role as a provider for his family, to include providing health insurance for his wife and children. If it weren't for his accident on October 11, 2002, at his employment, appellant would still be working for Safeway Inc. until he reached the age of 67. Disheartening is the fact that the appellant can no longer take advantage of the little things in life that he was able to do prior to his work related injury on October 11, 2002. Appellant is no longer part of the family outdoor activities with his children and no longer has the ability to be intimate with his wife at his young age. These issues are constant reminders of Safeway Inc. neglect as an Employer, and the constant stress the appellant faces every moment of his life.

REASONS FOR GRANTING THE PETITION

1. Petitioner sustained an injury on the job at Safeway Inc. October 11, 2002. Safeway Inc. and Safeway's Industrial Doctor Zoran Maric closed petitioner's case on February 15, 2003. After sustaining injury to Lower Back on the job working faithfully for Safeway Inc. for over 30 years Petitioner should be receiving Disability Compensation and Medical Benefits for the rest of his life.

2. Safeway Inc. made a surveillance tape of petitioner's daily activities. Safeway Inc. and Industrial Doctor Zoran Maric misidentified, lied, and falsified as to the contents of the tape. It was not the petitioner loading groceries into the back of the van while bending and twisting. It was Petitioner's 14 year old son. Petitioner is only holding a loaf of bread and a bag of potato chips. While at the airport Petitioner

lifted a garment bag not a suitcase. The surveillance tape was the final report in the decision to take away Petitioner's compensation.

3. In addition to firing the Petitioner on February 15, 2003, Petitioner is suing Safeway Inc. for $45 million dollars for all the unnecessary stress Safeway Inc. caused dating from November 4, 1996. This started the last six years of Petitioners employment. Mystery Shopper reported the Petitioner did not smile while working. Petitioner was on vacation 3,000 miles away at this time. This report lost the Petitioner's stock option. Contributors to stress included age discrimination one day before 50th birthday, Nationality Discrimination, and accusation of theft of one cup of coffee and two soda pops. With all the added stress Petitioner underwent open heart double bypass surgery on February 18, 2003. Petitioner never received any compensation for his heart condition.

4. Petitioner went for justice to Industrial Commission of Arizona. The Industrial Commission only affirmed Safeway Inc. decision to close the case. Court of Appeals Division One denied and dismissed the case. Supreme Court of Arizona also denied and dismissed the case. None of the Arizona Court systems reviewed Petitioner's case. Petitioner is an American Citizen and has rights. Petitioner gave 30 years of his young life to Safeway Inc. before sustaining injury to his lower back causing Disability. Petitioner is entitled to a fair trial and fair judgement not to be pushed around for three years, like a piece of trash in the field, from one Arizona Court to another. This is why Petitioner's Petition should be granted in the Supreme Court of the United States.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

WACLAW M. TROJANEK

Date: 4th day of August 2006

APPENDIX A

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

WACLAW M. TROJANEK, Petitioner, v. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, SAFEWAY, INC., Respondent Employer, SAFEWAY STORES INC., Respondent Carrier.	) Court of Appeals) Division One) No. 1 CA-IC 05-0030) ICA Claim) No. 20023-090078) Carrier Claim) No. 17106299 **ORDER** (Filed Dec. 06, 2005)

The court has received and considered petitioner's Petition for Motion for Reconsideration filed on November 7, 2005, respondent carrier's Statement of Costs filed on November 4, 2005, and petitioner's Response to Statement of Cost filed on November 10, 2005.

IT IS ORDERED denying petitioner's motion for reconsideration.

IT IS FURTHER ORDERED awarding respondent carrier its taxable costs in the amount of $134.00.

DATED December 6, 2005 .

/s/ Philip Hall
PHILIP HALL, Presiding Judge

APPENDIX B

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

WACLAW M. TROJANEK, Petitioner, v. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, SAFEWAY, INC., Respondent Employer, SAFEWAY STORES INC., Respondent Carrier.	) Court of Appeals) Division One) No. 1 CA-IC 05-0030) ICA Claim) No. 20023-090078) Carrier Claim) No. 17106299 **ORDER** (Filed Jul. 11, 2006)

The court has received and considered petitioner's Motion to Stay Mandate to File Writ of Certiorari to United States Supreme Court filed on June 16, 2006.

IT IS ORDERED denying petitioner's motion.

DATED this 11th day of July, 2006.

/s/ Philip Hall
PHILIP HALL, Presiding Judge

APPENDIX C

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

WACLAW M. TROJANEK, Petitioner, v. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, SAFEWAY, INC., Respondent Employer, SAFEWAY STORES INC., Respondent Carrier.	Court of Appeals Division One No. 1 CA-IC 05-0030 ICA Claim No. 20023-090078 Carrier Claim No. 17106299 **ORDER** (Filed Jul. 25, 2006)

The court has received and considered petitioner's Motion to Reconsider Mandate to File Writ of Certiorari to United States Supreme Court filed on July 14, 2006.

IT IS ORDERED denying petitioner's motion.

DATED this 25th day of July, 2006.

/s/ Philip Hall
PHILIP HALL, Judge
Department D

APPENDIX D

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

WACLAW TROJANEK, Applicant, vs. SAFEWAY, INC, Defendant Employer, SAFEWAY STORES INC., Defendant Insurance Carrier.	ICA Claim No. 20023090078 Ins. Claim No. 17106299 Date of Injury: 10/11/2002 **FINDINGS AND AWARD**

The applicant sustained a compensable injury on October 11, 2002. Most recently, his claim was closed without permanent disability effective February 2003. A Request for Hearing was filed against the closure notice and the matter went to hearing. On October 29, 2003, the Honorable Marigene Dessaint issued a Decision Upon Hearing and Findings and Award. This decision was affirmed as modified on December 23, 2003. On December 20, 2004, the applicant filed a Request for Hearing. It is directed to the same claim and issue which was the subject of the hearings before Judge Dessaint which ended in her Decision Upon Review. The carrier has filed a Motion to Dismiss the Request for Hearing on the grounds that the Commission is without jurisdiction to consider it. The applicant filed a lengthy response by letter dated January 27, 2005. I have considered the materials enclosed with Safeway's counsel's letter/motion of January 24, 2005 together with the letter and materials enclosed with applicant's letter of January 27, 2005. Based on the consideration of the foregoing, I make the following findings:

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

CERTIFICATE OF SERVICE

The attached ***FINDINGS AND AWARD*** was placed in, and is now a part of, the Commission file, and, pursuant to A.A.C. R20-5-158, copies were served upon the applicant, employer, insurance carrier, and upon all other parties hereinafter named on **Monday, January 31, 2005**, by depositing copies in the United States mail in postage-prepaid envelopes addressed to such parties at their addresses shown below:

WACLAW TROJANEK
4428 W CHOLLA ST
GLENDALE AZ 85304

J. RUSSELL SKELTON
ATTORNEY AT LAW
2901 N CENTRAL AVE STE 800
PHOENIX AZ 85012-2703

Counsel for SAFEWAY INC, Defendant Employer
SAFEWAY STORES, INC., Defendant Carrier

/s/ Carmen [Illegible]
Signature of person
certifying service

---

1. This matter has already been litigated. The last proceeding ended in December 2003. The applicant did not seek review by the Court of Appeals but instead filed a proceeding with the Maricopa County Superior Court. Although applicant styles his most recent request as a "Reopening", there was no Petition to Reopen filed and

there is nothing in his documents which, even if taken to be true, would support the processing of a reopening petition by the Claims Division of the Industrial Commission.

2. I find that the Commission is without jurisdiction to consider applicant's Request for Hearing dated December 20, 2004 for the reasons set forth in Safeway's counsel's letter of January 4, 2005.

AWARD

IT IS ORDERED dismissing applicant's Request for Hearing dated December 20, 2004.

NOTICE: Any party dissatisfied with this award may file a written request for review of the same with the Administrative Law Judge Division of the Industrial Commission within THIRTY (30) DAYS after the mailing of this award as provided by Arizona Revised Statutes, §§ 23-942D and 23-943A and B. Unless such written request is made within the time provided, this award is final.

By /s/ [Illegible]
STEPHEN W. POGSON
Administrative Law Judge

DATED AND MAILED IN PHOENIX, ARIZONA THIS **MONDAY 31ST JANUARY 2005**.

APPENDIX E

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

WACLAW TROJANEK, Applicant, vs. SAFEWAY, INC, Defendant Employer, SAFEWAY STORES INC., Defendant Insurance Carrier.	ICA Claim No. 20023090078 Carrier Claim No. 17106299 Date of Injury: 10/11/2002 **DECISION UPON REVIEW AFFIRMING FINDINGS AND AWARD**

Heretofore, on January 31, 2005, FINDINGS AND AWARD was issued by the undersigned. Thereafter, on February 10, 2005, REQUEST FOR REVIEW was filed by Applicant. On February 18, 2005, counsel for defendants filed RESPONSE TO REQUEST FOR REVIEW.

The undersigned, having fully reconsidered the file, records and all matters hereunto appertaining, now enters DECISION UPON REVIEW AFFIRMING FINDINGS AND AWARD as follows:

FINDINGS

That the FINDINGS AND AWARD entered on January 31, 2005, is fully supported by the evidence and is hereby affirmed.

AWARD

IT IS ORDERED that the FINDINGS AND AWARD, heretofore entered on January 31, 2005, be, and the same hereby is, affirmed.

NOTICE: Any party dissatisfied with the Decision Upon Review may apply to the Arizona Court of Appeals, Division One, 1501 W. Washington, Phoenix, Arizona 85007, for a review of the lawfulness of the decision pursuant to the provisions of Arizona Revised Statutes, section 12-120.21B. and section 23-951A. See also, Arizona Revised Statutes, Vol. 17B, Rule 10, Rules of Procedure for Special Actions. This Decision Upon Review shall be final unless an application is made within thirty (30) days of the mailing of this Decision to the parties. Arizona Revised Statutes section 23-943H.

By /s/ [Illegible]
STEPHEN W. POGSON
Administrative Law Judge

DATED AND MAILED IN PHOENIX, ARIZONA THIS TUESDAY 1 MARCH 2005.

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

CERTIFICATE OF SERVICE

The attached ***DECISION UPON REVIEW AFFIRMING FINDINGS AND AWARD*** was placed in, and is now a part of, the Commission file, and, pursuant to A.A.C. R20-5-158, copies were served upon the applicant, employer, insurance carrier, and upon all other

parties hereinafter named on **Tuesday, March 1, 2005**, by depositing copies in the United States mail in postage-prepaid envelopes addressed to such parties at their addresses shown below:

WACLAW TROJANEK
4428 W CHOLLA ST
GLENDALE AZ 85304

J. RUSSELL SKELTON
ATTORNEY AT LAW
2901 N CENTRAL AVE STE 800
PHOENIX AZ 85012-2703

Counsel for SAFEWAY INC, Defendant Employer
SAFEWAY STORES, INC., Defendant Carrier

/s/ Carmen [Illegible]
Signature of person
certifying service

APPENDIX F

Waclaw M. Trojanek
4428 West Cholla
Glendale, AZ 85304
(602) 938-8522

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

WACLAW M. TROJANEK Petitioner, vs. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, SAFEWAY, INC., Defendant Employer, SAFEWAY INC., Defendant Insurance Carrier	ICA Claim No: 20023090078 SSN: 344-42-6927 Carrier No: 17106299 **PETITION FOR SPECIAL ACTION INDUSTRIAL COMMISSION** (Filed Mar. 8, 2005)

Petitioner requests that the Court of Appeals review the award of the Industrial Commission in ICA No. 20023090078, dated October 29, 2003, and the decision on review, dated January 31, 2005, and that the Clerk of the Court of Appeals issue a Writ of Review directing the Industrial Commission to certify its records, proceedings and evidence in this matter to the court of appeals.

[SEAL]

Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007-3231

TELEPHONE: (602) 542-9396

NOËL K. DESSAINT
CLERK OF THE COURT

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

June 5, 2006

RE: WACLAW TROJANEK v INDUSTRIAL COMM OF AZ/SAFEWAY
Arizona Supreme Court No. CV-05-0424-PR
Court of Appeals Division One No. 1 CA-IC 05-0030
Industrial Commission of Arizona No. 20023-090078
Insurance Carrier No. 17106299

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on June 5, 2006, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

A panel composed of Vice Chief Justice Berch, Justice Hurwitz and Justice Bales participated in the determination of this matter.

Record returned to the Court of Appeals, Division One, Phoenix, this 5th day of June, 2006.

Noël K Dessaint, Clerk

TO:
Waclaw M Trojanek
Laura L McGrory, Chief Counsel, Industrial Commission of Arizona
Charles G Rehling II, Jones Skelton & Hochuli PLC
Hon. Stephen W Pogson, Administrative Law Judge, Industrial Commission of Arizona
West Publishing Company
Lexis-Nexis
Philip G Urry, Clerk, Court of Appeals, Division One, Phoenix
sdt

APPENDIX H

INDUSTRIAL COMMISSION OF ARIZONA

IMPORTANT: This completed form must be filed at an Industrial Commission of Arizona (ICA) office. (See addresses below.) The form must be accompanied by a current medical report supporting the reopening of the claim.

PETITION TO REOPEN BASED ON NEW, ADDITIONAL, OR PREVIOUSLY UNDISCOVERED DISABILITY OR CONDITION

Copies of the Arizona Workers' Compensation Laws and Arizona Workers' Compensation Practice and Procedure and Information about the ICA claims and hearing process are available at the ICA offices and through the ICA website located at: www.ica.state.az.us

WACLAW M. TROJANEK Injured Worker	Social Security No. * 344-42-6927
vs.	Date of Injury: OCTOBER 11-2002
SAFEWAY INC. Defendant Employer	ICA Claim No.: 20023-090078
SAFEWAY STORES INC. Defendant Insurance Carrier	Ins. Carrier Claim No.: 17106299

* The mandatory requirement that the social security number be included in forms filed with the Claims Division or Special Fund Division of the Industrial Commission of Arizona is permitted by Section 7(a)(2)(B) of the Federal Privacy Act of 1974, because the Commission's forms, prescribed under the Commission's Rules in existence prior to January 1, 1975, required disclosure of the social security number. The number is used as a means of identifying all the various records in the Claims Division or Special Fund pertaining to an individual. The use of social security numbers is made necessary because of the large number of persons who have similar names and birth dates, and whose identities can only be distinguished by the social security number.

Reopening is requested based on the new, additional or previously undiscovered disability or condition listed below related to this claim:

PREVIOUSLY UNDISCOVERED SURVEILLANCE TAPE – HEART CONDITION – SENSE OF WELL BEING.

1. Check one of the following:

☒ Attached is a medical report to support this Petition to Reopen.

or

☐ Dr. _____ will submit a report to support this Petition to Reopen.

2. The following physicians have examined or treated me within the past two years for the conditions listed:

DOCTOR'S NAME	ADDRESS	CONDITION AND RATE OF TREATMENT
A. RONALD M. LAMPERT M.D.	1616 F MARY-LAND AVE PHOENIX, AZ	10-15-02 Lower Back Pain
B. ZORAN MARIC M.D.	333 W. THOMAS RD. SUITE 202	12-14-02 Lower Back Pain

3. I have worked for the following employers within the past two years.

NAME	ADDRESS	JOB DESCRIPTION
A.		
B.		

I have read this Petition to Reopen and the information contained is true and correct to the best of my knowledge.

/s/ Waclaw M. Trojanek — 11-30-04

Signature of person or the person's authorized representative requesting reopening is REQUIRED. — Date

602-938-8522
Telephone No.

4428 W Cholla
Address

GLENDALE — ARIZONA — 85304
City — State — Zip

Phoenix:
Mailing address: Industrial Commission of Arizona
P.O. Box 19070
Phoenix, Arizona 85005-9070

Street Address: 800 W. Washington Street
Phoenix, Arizona 85007-2922

Tucson Office: Industrial Commission of Arizona
2675 E. Broadway
Tucson, Arizona 85716-5342

MEDICAL AUTHORIZATION

By this medical authorization or reproduction, I authorize and request each physician and person in the medical or related fields and each hospital, clinic, establishment or place rendering me any medical or related service to allow The Industrial Commission of Arizona or its authorized representative, my employer or its insurance carrier and each person and physician appointed by them to have, examine and/or copy any and all

information, records and x-rays, regarding my physical condition and treatment.

/s/ Waclaw M. Trojanek — 11-30-04

Signature of person or the person's authorized representative requesting reopening. — Date

602-938-8522
Telephone No.

4428 W Cholla
Address

GLENDALE ARIZONA 85304
City State Zip

THE INDUSTRIAL COMMISSION COMPLIES WITH THE AMERICANS WITH DISABILITIES ACT OF 1990. IF YOU NEED THIS DOCUMENT IN ALTERNATIVE FORMAT, CONTACT CLAIMS AT (602) 542-4661.

NOTICE OF CLAIM STATUS

Carrier's Name and Address	ICA Claim No. 20023-090078
SAFEWAY INC. WORKERS' COMPENSATION SECTION 2750 S. PRIEST DR., TEMPE, AZ 85282 Telephone: (480) 894-4190 FAX: (480) 929-8090	Soc. Sec. No. 344-42-6927 Carrier Claim No. 17106299 Employer SAFEWAY INC. Address 2750 S. PRIEST DRIVE TEMPE, AZ 85282 Date Injured 10/11/2002

Claimant's Name and Address
Waclaw Trojanek 4428 W. Cholla Dr. Glendale, AZ 85304

ICA USE ONLY

1. ☐Claim is accepted for benefits by Safeway Inc.. (8)

2. ☐Claim is denied for benefit by Safeway Inc. (9)

3. ☐No compensation paid because no time was lost from work in excess of 7 days attributable to this injury. (10)

4. ☐Enclosed check for $_____ covers time lost, commencing _____ through _____ (7 days have been deducted if less than 14 calendar days lost). Payment has been made based on 66-2/3% of the monthly wage of _____ based on the following:

   ☐A. Statutory minimum or estimated monthly wage pending determination of Average Monthly Wage within 30 days. (11)

   ☐B. Average monthly wage at item of injury, (see attached calculation) subject to final determination by the Industrial Commission of Arizona within 30 days. (12)

5. ☐Temporary compensation changed to 66 2/3% of the difference between average monthly wage before injury and the wage claimant is able to earn after date of release for work, effective ___. (13)

6. ☐Temporary compensation and active medical treatment terminated on _____ because claimant was discharged. (14)

7. ☐Injury resulted in no permanent disability. (15)

8. ☐Injury resulted in permanent disability. (16) (Amount of permanent benefits, if any, and supportive medical benefits, if any, will be authorized by subsequent Notice.)

9. ☐Petition to Reopen accepted for benefits by (17) Safeway Inc..

10. ☒Petition to Reopen denied for benefits by (18) Safeway Inc..

11. ☐Other. (19)

MAILED ON: December 7, 2004

BY: /s/ E.L. Williams
E.L. Williams/lf

(Authorized Representative)
Tel. #: 480-894-4190

Copy to: Industrial Commission of Arizona
J. Russell Skelton

The insurance carrier/employer will, upon request, provide claimant a copy of the medical report to support the Findings 5, 6, 7 or 8. El responsable por la aseguranza/ patron, a peticion del asequrado, dara una copia del reporte medico que soporte los resultados de 5, 6, 7 o 8.

NOTICE TO CLAIMANT: If you do not agree with this NOTICE and wish a hearing on the matter, your written Request for Hearing must be received at either office of the Industrial Commission listed below within NINETY (90) DAYS after the date of mailing of this NOTICE, pursuant to A.R.S. 23-941 and 23-947. *IF NOT SUCH APPLICATION IS RECEIVED WITHIN THAT NINETY DAY PERIOD, THIS IS FINAL.*

AVISO AL RECLAMANTE: Si usted no esta de acuerdo con este AVISO, y desea una audiencia en esie caso. Su peticion por escrito pidiendo una audiencia debera ser

recibida en cualquira de las oficinas de la Comision Industrial a las direcciones abajo indicadas dentro de NOVENTA (90) DIAS despues de la lecha de este AVISO, de acuerdo con las leyes A.R.S. 23-941 y 23-947. *SI DICHA PETICION NO ESTA RECIBIDA DENTRO DEL PERIODO DE NOVENTA (90) DIA, ESTA AVISO SERA CONSIDERADO FINAL.*

Phoenix: Office:	Industrial Commission of Arizona 800 W. Washington Street Phoenix, Arizona 85007-2922 P.O. Box 19070 Phoenix, Arizona 85005-9070
Tucson Office:	Industrial Commission of Arizona 2675 E. Broadway Tucson, Arizona 85716-5342

THIS FORM APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR CARRIER USE

APPENDIX I

INDUSTRIAL COMMISSION OF ARIZONA

IMPORTANT: This completed form must be filed at an Industrial Commission office. (See addresses below.)

REQUEST FOR HEARING

WACLAW TROJANEK Injured Worker	Social Security No. * 344-42-6927
vs.	ICA Claim No. 20023-090078
SAFEWAY INC. Defendant Employer	Ins. Carrier Claim No. 17106299
SAFEWAY STORES INC. Defendant Insurance Carrier	Date of Injury 10-11-2002

Person Requesting Hearing: WACLAW TROJANEK

A hearing is requested on: *(Check appropriate box)*

☐ Notice of Claim Status dated: _____
MONTH/DAY/YEAR

or

☒ Notice, Award, Order or Decision by The Industrial Commission of Arizona dated: October 29-2003
MONTH/DAY/YEAR

* The mandatory requirement that the social security number be included in forms filed with the Claims Division or Special Fund Division of the Industrial Commission of Arizona is permitted by Section 7(a)(2)(B) of the Federal Privacy Act of 1974, because the Commission's forms, prescribed under the Commission's Rules in existence prior to January 1, 1975, required disclosure of the social security number. The number is used as a means of identifying all the various records in the Claims Division or Special Fund pertaining to an individual. The use of social security numbers is made necessary because of the large number of persons who have similar names and birth dates, and whose identities can only be distinguished by the social security number.

or

☐ A.R.S. §23-1061(J) or ☒ Other: I PREVIOUSLY UNDISCOVERED SURVEILLANCE

State reason for the request: TAPE FALLS REPORTS – I AM ASKING FOR FULL DISABILITY AND INSURANCE FOR THE REST OF MY LIFE
II HEART CONDITION DETERIORATING FROM STRESS I AM SUING SAFEWAY INC. FOR 45 MILLION.

Hearing requested at city or town of: _____
Estimated length of hearing: _____

I request that subpoenas be issued for the following witnesses to appear and testify at hearing:

(a) SOPHIE TROJANEK / 4428 W CHOLLA
(Name) GLENDALE, AZ 85304
(Address)

(b) _____ / _____
(Name) (Address)

(c) _____ / _____
(Name) (Address)

☐ Interpreter requested Specify Language: _____

Copies of the Arizona Workers' Compensation Laws and Arizona Workers' Compensation Practice and Procedure and information about the Industrial Commission of Arizona claims and hearing process are available at the Industrial Commission offices and through the ICA website located at: www.ica.state.az.us

/s/ Waclaw M. Trojanek — 12-20-04

Signature of person or the person's authorized representative requesting hearing is REQUIRED. — Date:

602-938-8522
Telephone No.

4428 W Cholla
(Address of Injured Worker Only)

GLENDALE	AZ	85304
City	State	Zip

IMPORTANT: You will be notified of hearing date in writing by mail. You must keep the Administrative Law Judge advised of any address change.

Phoenix: Mailing address:	Industrial Commission of Arizona P.O. Box 19070 Phoenix, Arizona 85005-9070
Street Address:	800 W. Washington Street Phoenix, Arizona 85007-2922
Tucson Office:	Industrial Commission of Arizona 2675 E. Broadway Tucson, Arizona 85716-5342

APPENDIX J

INDUSTRIAL COMMISSION OF ARIZONA

IMPORTANT: This completed form must be filed at an Industrial Commission office. (See addresses below.)

REQUEST FOR HEARING

WACLAW TROJANEK
Injured Worker

vs.

SAFEWAY INC.
Defendant Employer

SAFEWAY INC.
Defendant Insurance Carrier

Social Security No. *
344-42-6927

ICA Claim No.
20023-090078

Ins. Carrier Claim No.
17106299

Date of Injury
10/11/2002

Person Requesting Hearing: WACLAW TROJANEK

A hearing is requested on: *(Check appropriate box)*

☒ Notice of Claim Status dated: 12-7-04
MONTH/DAY/YEAR

or

☐ Notice, Award, Order or Decision by The Industrial Commission of Arizona dated: _____
MONTH/DAY/YEAR

* The mandatory requirement that the social security number be included in forms filed with the Claims Division or Special Fund Division of the Industrial Commission of Arizona is permitted by Section 7(a)(2)(B) of the Federal Privacy Act of 1974, because the Commission's forms, prescribed under the Commission's Rules in existence prior to January 1, 1975, required disclosure of the social security number. The number is used as a means of identifying all the various records in the Claims Division or Special Fund pertaining to an individual. The use of social security numbers is made necessary because of the large number of persons who have similar names and birth dates, and whose identities can only be distinguished by the social security number.

or

☐ A.R.S. §23-1061(J) or ☐ Other: _____

State reason for the request: PREVIOUSLY UNDISCOVERED SURVEILLANCE TAPE (FALSE REPORTS MADE BY SAFEWAY AND SAFEWAY'S DOCTOR ZORAN MERIC MD.) I AM ASKING FOR FULL DISABILITY COMPENSATION AND INSURANCE.

Hearing requested at city or town of: _____

Estimated length of hearing: _____

I request that subpoenas be issued for the following witnesses to appear and testify at hearing:

(a) SOPHIE TROJANEK / 4428 W CHOLLA GLENDALE, AZ 85304
(Name) (Address)

(b) _____ / _____
(Name) (Address)

(c) _____ / _____
(Name) (Address)

☐ Interpreter requested Specify Language: _____

Copies of the Arizona Workers' Compensation Laws and Arizona Workers' Compensation Practice and Procedure and information about the Industrial Commission of Arizona claims and hearing process are available at the Industrial Commission offices and through the ICA website located at: www.ica.state.az.us

/s/ Waclaw Trojanek 2-10-05
Signature of person or the person's authorized representative requesting hearing is REQUIRED. Date:

602 938-8522
Telephone No.

4428 W Cholla
(Address of Injured Worker Only)

GLENDALE	ARIZONA	85304
City	State	Zip

IMPORTANT: You will be notified of hearing date in writing by mail. You must keep the Administrative Law Judge advised of any address change.

Phoenix:	Industrial Commission of Arizona
Mailing address:	P.O. Box 19070 Phoenix, Arizona 85005-9070
Street Address:	800 W. Washington Street Phoenix, Arizona 85007-2922
Tucson Office:	Industrial Commission of Arizona 2675 E. Broadway Tucson, Arizona 85716-5342

THE INDUSTRIAL COMMISSION COMPLIES WITH THE AMERICANS WITH DISABILITIES ACT OF 1990. IF YOU NEED THIS DOCUMENT IN ALTERNATIVE FORMAT, CONTACT CLAIMS AT (602) 542-4661.

APPENDIX K

Waclaw M. Trojanek
4428 West Cholla
Glendale, AZ 85304
(602) 938-8522

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

WACLAW M. TROJANEK, Petitioner, vs. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, SAFEWAY INC., Defendant Employer, SAFEWAY INC., Defendant Insurance Carrier	I-CA-IC05-0030 ICA Claim No: 20023-090078 SSN: 344-42-6927 Carrier No: 17106299 **PETITION FOR MOTION FOR RECONSIDERATION** Filed Nov. 7, 2005

Petitioner requests that the Court of Appeals review the award of the Industrial Commission in ICA No. *20023-090078,* dated *October 25, 2005.*

DATED this 07 day of November 2005

/s/ Waclaw M. Trojanek
WACLAW M. TROJANEK
4428 WEST CHOLLA
GLENDALE, AZ 85304

Petitioner urges the Appeals Court Division One to accept motion for reconsideration.

The overriding issue in this case is ignored for the fact that there would not be any court hearings or any litigation if only Safeway Inc. had treated Petitioner as a human being who gave 30 stellar years of his young adult life to its company. These unnecessary hearings all stemmed from the injury the Petitioner sustained while employed at Safeway Inc on October 11, 2002. Safeway and Safeway Doctors had swept the Petitioner under a rug like a piece of trash.

Despite of Petitioner's lower back injury, Safeway Inc. and Dr. Zoran Maric decided on February 15, 2003 to close the case. Dr. Zoran Maric was never interested in Petitioner's injury and well-being. Dr. Zoran Maric briefed Petitioner that he is sending him to Physical Therapy to roughen him up in order to send him back to work. After the physical therapy sessions, Petitioner had only felt worse than progressing to a better health status. Petitioner had no choice of Doctor's or any treatment because Safeway Industrial would not approve any other Doctor's but their own.

On February 20, 2003 Petitioner received a letter from Safeway Industrial that Petitioner was to return to work on February 15, 2003. The letter was delivered five days after Petitioner was to return to work. Safeway found the perfect opportunity to terminate the Petitioner, using his lower back injury as a scapegoat. Meanwhile, Petitioner was undergoing a double by-pass surgery on February 18, 2003 which required Safeway Industrial to approve the surgery to take place. Not only did Petitioner sustain a work related injury that has crippled him for life, but was

also undergoing heart surgery. Petitioner's compensation was cut off as of February 15, 2003, leaving Petitioner and his family without any income. Petitioner is requesting the Arizona Court of Appeals to do a thorough review of Petitioner's case in order for Petitioner to receive a continuation of his medical benefits and compensation.

Industrial Commission Judge Dessaint used reports from Kevin Laden M.D., the independent medical evaluation for her decision. Dr. Kevin Laden's visit with the Petitioner lasted five to ten minutes, but Dr. Laden was able to complete a nine page report on his evaluation of Petitioner without any tests. Dr. Laden used Dr. Zoran Maric's report and concluded that Petitioner had no permanent impairment without work restrictions. Judge Dessaint extended Petitioner's compensation to June 25, 2003 and affirmed the award that Safeway concluded on February 15, 2003. Petitioner is totally disabled, unable to work since his injury on October 11, 2002. Petitioner should be receiving disability compensation and medical benefits for the rest of his life, instead of terminating his employment without benefits and treating him like a piece of trash. Petitioner had worked faithfully for 30 years and if Petitioner did not sustain his injury, he would be still employed by Safeway Inc. for another 12 years before his normal retirement.

Dr. Zoran Marics report was vital for Safeway justifying Petitioner's termination of employment and termination of all benefits. In addition to this report, Safeway Inc. made a surveillance tape of Petitioner performing day to day activities, which Dr. Zoran Maric falsified the truth of his physical abilities that are noted in his final report. The surveillance footage was attached and given to the Court of Appeals Division One Judges to review If the Judges

would have reviewed this surveillance footage, they would be able to confirm the lies of Petitioner's physical abilities that Dr. Zoran Maric stated in his final report.

Petitioner feels that the Appeals Court Division One Judges have not thoroughly reviewed or listened to Petitioners replies or request of his case, but have only affirmed what Safeway Inc. and Safeway's Doctors have stated. Petitioner is an American citizen without a high level of education, proud parent of twelve children, and a faithful employee. Petitioner can not afford an expensive Attorney but does have rights as an American Citizen to receive a fair hearing in the court of law. Petitioner is disabled because of the sustained injury he received while working at Safeway Inc. on October 11, 2002. Petitioner should be receiving disability compensation and medical benefits for the rest of his life. Petitioner does not care how long it takes to receive a fair judgment, whether it's taking all the necessary steps up to the Arizona Supreme Court, and if necessary to the United States Supreme Court with the assistance of News Media televising the injustice done to him by Safeway Inc.

/s/ Waclaw M. Trojanek
WACLAW M. TROJANEK

COPIES of the foregoing
mailed this 07 day of
November, 2005, to:

SAFEWAY INC.

WORKERS' COMPENSATION SECTION
2750 S PRIEST DR, TEMPE, AZ 85282

INDUSTRIAL COMMISSION OF ARIZONA
800 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007

Mr. CHARLES G. REHLING II
JONES SKELTON & HOCHULI PLC
2901 NORTH CENTRAL AVENUE
SUITE 800
PHOENIX, ARIZONA 85012-2703
ATTORNEYS FOR: RESPONDENT CARRIER

LAURA L. MCGRORY
CHIEF COUNSEL
INDUSTRIAL COMMISION OF ARIZONA
PHOENIX OFFICE
800 W. WASHINGTON STE 303
PHOENIX, AZ 85007-2934

MR. STEPHEN W. POGSON
ADMINISTRATIVE LAW JUDGE
INDUSTRIAL COMMISSION OF ARIZONA
PHOENIX OFFICE
800 W. WASHINGTON STE 303
PHOENIX, AZ 85007-2934

Waclaw M. Trojanek
WACLAW M. TROJANEK
07 NOVEMBER 2005

APPENDIX L

[LOGO] ®

Biltmore Advanced Imaging Center

PATIENT NAME: TROJANEK, WACLAW M.

PATIENT#: 05-78-81

DOB: 08-06-55 AGE: M-47

REFERRING PHYSICIAN: RONALD M. LAMPERT, M.D.

EXAM: MRI OF THE LUMBAR SPINE: 10/15/02

CLINICAL HISTORY: A clinical history of left-sided pain has been provided.

COMPARISON: There are no previous studies available for comparison.

TECHNICAL: Sagittal T2 FSE, sagittal spine-echo T1, sagittal FSE proton density, axial oblique T1, and axial FSE T2 stack imaging was performed.

FINDINGS: The conus medullaris appears normal with respect to caliber, contour, and signal intensity and terminates at the level of the T12-L1 vertebral disk space. The marrow signal appears homogeneous. Note is made of a congenitally small spinal canal.

T12-L1: Minor degenerative changes are seen within the facet joints. The intervertebral disk is unremarkable. No significant foraminal narrowing or compromise of the spinal canal is appreciated.

L1-2: Circumferential bulging in the intervertebral disk is appreciated eccentric to the left. Additionally, a superimposed broad-based protrusion of the intervertebral disk is seen eccentric to the left, extending into the left neural

foramen, resulting in a moderate narrowing. Minor degenerative changes are seen within the facet joints. The right neural foramen and the spinal canal appear patent.

L2-3: Minor circumferential bulging in the intervertebral disk is appreciated. Degenerative changes are noted within the facet joints. No significant foraminal narrowing or compromise of the spinal canal is identified.

L3-4: Circumferential bulging of the intervertebral disk is appreciated. Degenerative changes are seen within the facet joints. No significant foraminal narrowing or compromise in the spinal canal is appreciated.

L4-5: Bulging of the intervertebral disk is appreciated. Degenerative changes are seen within the facet joints. No significant foraminal narrowing is identified. The degenerative findings at this level are superimposed upon a congenitally small spinal canal resulting in mild compromise.

L5-S1: Circumferential bulging in the intervertebral disk is appreciated with an associated high intensity zone within the annulus posteriorly. Degenerative changes are seen within the facet joints. No significant foraminal narrowing or compromise of the spinal canal is identified.

A focus which is of increased signal intensity on both T1 and T2-weighted imaging is seen within the S1 vertebral body, consistent with either a small hemangioma or a lipomatous rest. A cystic structure is seen adjacent to the right renal pelvis, consistent with a parapelvic cyst.

IMPRESSION:

1. Bulging in a superimposed protrusion of the intervertebral disk is seen at the L1-2 level,

resulting in moderate narrowing of the left neural foramen.

2. Degenerative changes are seen within the intervertebral disk and facet joints, which are superimposed upon a congenitally small spinal canal resulting in mild compromise at the L4-5 level.

3. A finding consistent with a parapelvic cyst is seen within the right kidney. Further characterization with sonography could be performed as clinically warranted.

TREVOR KOTYLAK, M.D.

/s/ [Illegible]
ROGER BIRD, M.D.
DD: 10/16/02 DT: 10/17/02
RB/cd/cd

NOTICE OF CLAIM STATUS

Carrier's Name and Address	ICA Claim No. 20023-090078
SAFEWAY INC. WORKERS' COMPENSATION SECTION 2750 S. PRIEST DR., TEMPE, AZ 85282 Telephone: (480) 894-4190 FAX: (480) 929-8090	Soc. Sec. No. 344-42-6927 Carrier Claim No. 17106299 Employer SAFEWAY INC. Address 2750 S. PRIEST DRIVE TEMPE, AZ 85282 Date Injured 10/11/2002

Claimant's Name and Address
Waclaw Trojanek 4428 W. Cholla Dr. Glendale, AZ 85304

ICA USE ONLY

1. ☐Claim is accepted for benefits by Safeway Inc.. (8)

2. ☐Claim is denied for benefit by Safeway Inc. (9)

3. ☐No compensation paid because no time was lost from work in excess of 7 days attributable to this injury. (10)

4. ☐Enclosed check for $_____ covers time lost, commencing _____ through _____ (7 days have been deducted if less than 14 calendar days lost). Payment has been made based on 66-2/3% of the monthly wage of _____ based on the following:

   ☐A. Statutory minimum or estimated monthly wage pending determination of Average Monthly Wage within 30 days. (11)

   ☐B. Average monthly wage at item of injury, (see attached calculation) subject to final determination by the Industrial Commission of Arizona within 30 days. (12)

5. ☒Temporary compensation changed to 66 2/3% of the difference between average monthly wage before injury and the wage claimant is able to earn after date of release for work, effective 2/15/2003. (13)

6. ☒Temporary compensation and active medical treatment terminated on 2/15/2003 because claimant was discharged. (14)

7. ☒Injury resulted in no permanent disability. (15)

8. ☐Injury resulted in permanent disability. (16) (Amount of permanent benefits, if any, and supportive medical benefits, if any, will be authorized by subsequent Notice.)

9. ☐Petition to Reopen accepted for benefits by (17) Safeway Inc..

10. ☐Petition to Reopen denied for benefits by (18) Safeway Inc..

11. ☐Other. (19)

MAILED ON: February 18, 2003

BY: /s/ E.L. Williams
E.L. Williams/lf

(Authorized Representative)
Tel. #: 480-894-4190

Copy to: Industrial Commission of Arizona

The insurance carrier/employer will, upon request, provide claimant a copy of the medical report to support the Findings 5, 6, 7 or 8. El responsable por la aseguranza/ patron, a peticion del asequrado, dara una copia del reporte medico que soporte los resultados de 5, 6, 7 o 8.

NOTICE TO CLAIMANT: If you do not agree with this NOTICE and wish a hearing on the matter, your written Request for Hearing must be received at either office of the Industrial Commission listed below within NINETY (90) DAYS after the date of mailing of this NOTICE, pursuant to A.R.S. 23-941 and 23-947. *IF NOT SUCH APPLICATION IS RECEIVED WITHIN THAT NINETY DAY PERIOD, THIS IS FINAL.*

AVISO AL RECLAMANTE: Si usted no esta de acuerdo con este AVISO, y desea una audiencia en esie caso. Su peticion por escrito pidiendo una audiencia debera ser

recibida en cualquira de las oficinas de la Comision Industrial a las direcciones abajo indicadas dentro de NOVENTA (90) DIAS despues de la fecha de este AVISO, de acuerdo con las leyes A.R.S. 23-941 y 23-947. *SI DICHA PETICION NO ESTA RECIBIDA DENTRO DEL PERIODO DE NOVENTA (90) DIA, ESTA AVISO SERA CONSIDERADO FINAL.*

Phoenix Office:	Industrial Commission of Arizona 800 W. Washington Street Phoenix, Arizona 85007-2922 P.O. Box 19070 Phoenix, Arizona 85005-9070
Tucson Office:	Industrial Commission of Arizona 2675 E. Broadway Tucson, Arizona 85716-5342

THIS FORM APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR CARRIER USE

[LOGO] SAFEWAY INC.
2750 S. Priest Drive, Tempe, AZ 85282

RETURN SERVICE REQUESTED [METERED POSTAGE] Feb. 19, 2003

APPENDIX M

Social Security Administration
Retirement, Survivors and Disability Insurance
Notice of Award

Great Lakes Program Service Center
600 West Madison Street
Chicago, Illinois 60661-2474
Date: June 16, 2003
Claim Number: 344-42-6927HA

WACLAW TROJANEK
4428 W. CHOLLA
GLENDALE, AZ 85304-3534

You are entitled to monthly disability benefits beginning April 2003.

The Date You Became Disabled

We found that you became disabled under our rules on October 11, 2002.

However, you have to be disabled for 5 full calendar months in a row before you can be entitled to benefits. For these reasons, your first month of entitlement to benefits is April 2003.

What We Will Pay And When

- You will receive $3,416.00 around June 22, 2003.
- This is the money you are due for April 2003 and May 2003.
- Your next payment of $1,708.00, which is for June 2003, will be received on or about the second Wednesday of July 2003.

- After that you will receive $1,708.00 on or about the second Wednesday of each month.
- These and any future payments will go to the financial institution you selected. Please let us know if you change your mailing address, so we can send you letters directly.

The day we make payments on this record is based on your date of birth.

Enclosure(s):
Pub 05-10153
Pub 05-10058

Other Social Security Benefits

The benefit described in this letter is the only one you can receive from Social Security. If you think that you might qualify for another kind of Social Security benefit in the future, you will have to file another application.

Your Responsibilities

The decisions we made on your claim are based on information you gave us. If this information changes, it could affect your benefits. For this reason, it is important that you report changes to us right away.

We have enclosed a pamphlet, "When You Get Social Security Disability Benefits . . . What You Need To Know." It will tell you what must be reported and how to report. Please be sure to read the parts of the pamphlet which explain what to do if you go to work or if your health improves.

A provider of employment or vocational rehabilitation services may contact you about getting help to go to work. The provider may be a State vocational rehabilitation agency or a provider under contract with the Social Security Administration.

If you go to work, special rules allow us to continue your cash payments and health care coverage. For more information about how work and earnings affect disability benefits, call or visit any Social Security office and ask for the following publications:

- Social Security – Working While Disabled . . . How We Can Help (SSA Publication No. 05-10095).
- Social Security – If You Are Blind – How We Can Help (SSA Publication No. 05-10052).

Do You Disagree With The Decision?

If you disagree with this decision, you have the right to appeal. We will review your case and consider any new facts you have. A person who did not make the first decision will decide your case. We will correct any mistakes. We will review those parts of the decision which you believe are wrong and will look at any new facts you have. We may also review those parts which you believe are correct and may make them unfavorable or less favorable to you.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.

- You must have a good reason for waiting more than 60 days to ask for an appeal.
- You have to ask for an appeal in writing. We will ask you to sign a Form SSA-561-U2, called "Request for Reconsideration". Contact one of our offices if you want help.

Please read the enclosed pamphlet, "Your Right to Question the Decision Made on Your Social Security Claim". It contains more information about the appeal.

Things To Remember For The Future

Doctors and other trained staff decided that you are disabled under our rules. However, we must review all disability cases. Therefore, we will review your case in 5 to 7 years. We will send you a letter before we start the review. Based on that review, your benefits will continue if you are still disabled, but will end if you are no longer disabled.

If You Want Help With Your Appeal

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due benefits to pay toward the fee.

If You Have Any Questions

We invite you to visit our website at www.socialsecurity.gov on the Internet to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-602-298-4120. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY
5907 W KINGS AVE
GLENDALE, AZ 85306

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

/s/ Jo Anne B. Barnhart
Jo Anne B. Barnhart
Commissioner of Social Security

APPENDIX N

UNITED FOOD AND COMMERCIAL WORKERS & EMPLOYERS
Arizona Health & Welfare Trust

ADMINISTRATOR: Southwest Service Administrators, Inc.
2400 W. Dunlap Ave., Suite 250•Phoenix, AZ 85021
•Phone 602-249-3582•Toll Free 1-800-474-3485
•Fax 602-249-3795

[LOGO]

October 10, 2003

Wasclaw Trojanek
4428 W Cholla
Glendale, AZ 85304

RE Participant: Waclaw Trojanek
SS #: 344-42-6927

Dear: Mr. Trojanek

We have received your attending physician's statement, which confirms that you are totally disabled because of **Low Back Pain, Depression, CAD.** We are pleased to be able to advise that the Fund will continue to cover charges incurred relative to these conditions, as provided under Article 1, Section 1D.01 of your plan, through **12/31/04.**

Please Note: This extension of coverage is available only as long as no other coverage is available, regardless of limits or pre-existing provisions of the other plan. This includes AHCCCS and Medicare.

We are also pleased to be able to advise the Fund will continue your death benefits under the Group Life Policy for $10,000.00 as provided under Article 3, Section 3A.07 of your plan. Fund records show the beneficiary of record is **Sophia Trojanek**. In approximately one year, the Fund

will contact you for Current information regarding your total disability. ***However, this benefit will terminate should you cease to be totally disabled or fail to submit required proof of total disability.***

Please accept our best wishes for your recovery from this disability. Please let us know if we can be of further assistance.

Sincerely

/s/ Anna Jones

Anna Jones
Disability Claims Processor
Southwest Service
Administrators, Inc.

APPENDIX O

[LOGO] ARIZONA SPINE CENTER
DISORDERS OF THE SPINE

Zoran Maric, M.D.
Orthopedic Surgeon

01/29/03

PATIENT: Waclaw Trojanek

FOLLOW-UP REPORT

HISTORY OF PRESENT ILLNESS:

The patient is a 55-year-old male who is here for follow-up of persistent low back pain. Mr. Trojanek was last seen by myself three weeks ago. At that time, I reviewed his MRI scan. I felt that it was normal. I prescribed a course of physical therapy.

Mr. Trojanek states that he has been going to physical therapy. He states the physical therapy, however, is not helping. He feels that the physical therapy is, in fact, aggravating his pain. It should be noted that Mr. Trojanek was rather angry today.

PHYSICAL EXAMINATION:

Deferred.

RECORD REVIEW:

Physical therapy note dated 01/29/03 was reviewed. This was from Strength Training Physical Therapy. Mr. Trojanek continued to report significant persistent pain. The physical therapist, however, noted that his complaints of pain and his ability to perform exercises and functional activities in therapy did not correlate. The

therapist noted that he was able to push/pull 75 pounds up to 300 feet. He was able to perform assisted squats and negotiate stairs without any difficulty.

It should also be noted that Mr. Trojanek has applied for Social Security Disability. I did have Department of Economic Security paperwork present on the chart when I saw him.

SURVEILLANCE TAPE REVIEW:

Surveillance tape was reviewed. On 01/24/03 he was observed driving a red van. He was observed getting out of the driver's side of the van slowly and carefully. He was, however, parked in a very tight space. He was then observed walking away from the van. There was a slight limp. He appeared to be walking to a doctor's office building. He was then observed walking away from the building. He appeared to be walking in a similar fashion. He was then observed getting back into the driver's side of the van and driving away. Later, he was observed getting out of the driver's side of the van very slowly and gingerly placing his feet onto the ground. He was then again observed walking with a slight limp. He was subsequently observed loading groceries into the back of the van. He appeared to be bending and twisting easily.

On 01/25/03 he was observed walking into a store. He again ambulated with a slight limp. He was subsequently observed walking in a parking lot without a significant limp. He was then observed exiting what appeared to be a jewelry store. He appeared to walk without a limp. He was then observed getting into the driver's side of the van and driving away. He was then

observed at a curbside check-in at the airport. He was observed lifting a suitcase and carrying it without apparent difficulty.

On 01/29/03 he was observed getting into the driver's side of the van slowly. He was then subsequently observed walking with a slight limp. He was observed walking to my office. He was subsequently observed slowly getting out of the driver's side of the van.

ASSESSMENT:

1. Lumbosacral musculoligamentous sprain/strain.
2. Functional overlay.

DISCUSSION:

Mr. Trojanek presents with persistent lower back pain. He is not reporting any improvement with the physical therapy program. He is, in fact, reporting worsening pain. The physical therapist, however, noted that Mr. Trojanek's complaints of pain and his ability to perform exercises and functional activities did not correlate. In addition, Mr. Trojanek's MRI scan is normal. It certainly does not show any specific intraspinal pathology that could account for his complaints.

I explained to Mr. Trojanek that there is no physical reason why he should not be improving. I explained to him that it has now been three and a half months. He should have recovered long ago. It does, however, appear that Mr. Trojanek is not motivated to return to work. He, in fact, has already applied for Social Security Disability. This is after I reassured him last time that nothing serious happened with this work incident.

I told Mr. Trojanek that I do not have any further treatment recommendations for him. He was not happy with these recommendations. I told him that he is free to seek other opinions. I do not, however, feel that further active treatment is indicated based on this 10/11/02 work injury. From an objective clinical standpoint, it would appear that his condition is medically stationary without impairment. There is no objective basis for any work restrictions or supportive care.

I have no further recommendations with regard to his evaluation.

Zoran Maric, M.D.

ZM/jkb
(Dictated but not read)

cc: Jackie Rogers, RN
Liz Williams at Safeway
Ronald Lampert, M.D.

(3)

06- 540

No. _____

FILED
SEP 17 2006

In The

Supreme Court of the United States

WACLAW M. TROJANEK,

Petitioner,

vs.

SAFEWAY INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals, State Of Arizona, Division One

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

WACLAW M. TROJANEK
4428 W. Cholla
Glendale, Arizona 85304
602-938-8522

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

WACLAW M. TROJANEK, Petitioner, v. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, SAFEWAY, INC., Respondent Employer, SAFEWAY STORES INC., Respondent Carrier.	) 1 CA-IC 05-0030) DEPARTMENT D) **MEMORANDUM DECISION**) (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)) (Filed Oct. 25, 2005)

Special Action – Industrial Commission

ICA CLAIM NO. 20023-090078

CARRIER NO. 17106299

Administrative Law Judge Stephen W. Pogson

AWARD AFFIRMED

Waclaw M. Trojanek — Glendale
Petitioner *In propria persona*

Laura L. McGrory, Chief Counsel — Phoenix
The Industrial Commission of Arizona
Attorney for Respondent

Jones, Skelton & Hochuli — Phoenix
By Charles G. Rehling
Attorneys for Respondents Employer and Carrier

HALL, Judge,

¶1 The claimant, Waclaw Trojanek, seeks special action review of the denial of his petition to reopen. First, the claimant argues that in deciding to deny the petition to reopen, the administrative law judge (ALJ) erroneously relied on the unfairly biased independent medical examination (IME) report of Zoran Maric, M.D. Second, the claimant contends that the employer and carrier, Safeway Stores, wrongfully terminated him. Finally, the claimant argues that his industrial injury continues to "assist" in the deterioration of his well-being and health, status. We determine that the ALJ did not abuse his discretion by finding that he lacked jurisdiction to consider the petition, and we affirm the award and decision upon review.

I.

¶2 The undisputed facts are as follows. On October 11, 2002, the claimant sustained a work-related injury to his back. Although the carrier initially accepted the claim and the claimant received workers' compensation benefits for a period of time, the carrier closed the claim without permanent impairment following Dr. Maric's IME.

¶3 The claimant protested the closure, and the matter proceeded to hearing in July and October of 2003. The ALJ, Honorable Marigene Dessaint, issued a decision upon hearing and findings and award on October 29, 2003, in which she found the claimant's condition stationary without, permanent impairment effective June 2003. The claimant requested review, and Judge Dessaint issued a decision upon review affirming and modifying her prior decision.

¶4 Judge Dessaint's award became final and unappealable when the claimant did not timely file a petition for special action review with the Arizona Court of Appeals. *See* Ariz. Rev. Stat. (A.R.S.) § 23-943(H) (1995) ("The decision upon review shall be final unless within thirty days after the date of mailing of copies of such decision to the parties, one of the parties applies to the court of appeals for a writ of certiorari pursuant to § 23-951.").

¶5 Instead, on the thirtieth day following the mailing of the decision upon review, the claimant filed a complaint for "administrative review" on his own behalf in Maricopa County Superior Court. The superior court, Honorable Michael D. Jones, dismissed the case for a lack of subject matter jurisdiction. *See* § 23-943(H).

¶6 The claimant filed a second complaint on his own behalf in Maricopa County Superior Court. The superior court, Honorable Rebecca Albrecht, dismissed the second complaint because when the claimant had accepted workers' compensation benefits, he also had elected to forgo "the right to sue his employer." *See* A.R.S. § 23-1024(A) (1995) ("An employee . . . who accepts compensation waives the right to exercise any option to institute proceedings in court against his employer. . . .").

¶7 On November 30, 2004, citing a "previously undiscovered surveillance tape," stress to his heart, and a decline in his "sense of well being," the claimant filed a petition to reopen. The claimant's supplemental letter also included reference to Dr. Maric's "misinterpretation" of the surveillance tape. The claimant attached a medical report that had been issued two months earlier by James Grepling, a physician's assistant. Mr. Grepling's report stated,

however, that there had been "no apparent change" in the claimant's medical condition.

¶8 On December 7, 2004, the carrier denied the petition to reopen. Although the claimant subsequently requested a hearing on December 20, 2004, his request for hearing form specified that this particular request concerned Judge Dessaint's prior award of October 29, 2003, rather than the carrier's more recent December 7, 2004 denial of the petition to reopen.

¶9 The ALJ, Honorable Stephen Pogson, issued a notice of hearing. In a letter dated January 24, 2005, counsel for the employer and carrier objected to hearing as follows: "With all due respect to the [claimant], the Commission is without jurisdiction to further process this most recent request for hearing. . . . The [claimant's] current Request for Hearing challenging the now final October 23 [sic], 2003 Award issued by [J]udge Dessaint should be dismissed forthwith."

¶10 The claimant responded by asking Judge Pogson not to cancel the hearing for reasons that were nearly identical to those he previously had provided in his November 30, 2004 petition to reopen. The justifications included the claimant's discovery of the surveillance tape, his continued physical deterioration, his heart condition, and Dr. Maric's misinterpretation of the surveillance tape.

¶11 Judge Pogson issued a decision upon hearing and findings and award on January 31, 2005, in which he determined that he lacked jurisdiction to consider the claimant's petition because it constituted an impermissible challenge to Judge Dessaint's final award of October 29, 2003. Judge Pogson also indicated that even if the claimant had

intended his request to be a petition to reopen, it was not supported by the evidence.

¶12 On February 10, 2005, the claimant requested review of Judge Pogson's award. On the same date, the claimant filed a request for hearing regarding the carrier's December 7, 2004 denial of his petition to reopen. In this new request for hearing, the claimant asserted that reopening was appropriate because of a "[p]reviously undiscovered surveillance tape" and the "false reports" of Safeway and Dr. Maric. The claimant attached the same medical report by Mr. Grepling that had been attached to the November 30, 2004 petition to reopen.

¶13 On March 1, 2005, Judge Pogson summarily affirmed his January 31, 2005 award. The claimant filed a timely petition seeking special action review from this court. It appears that the claimant's February 10, 2005 request for hearing regarding the carrier's December 7, 2004 denial of his November 30, 2004 petition to reopen remained unresolved when the ICA transferred the claimant's file to the court of appeals.

II.

¶14 We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2) (2003) and 23-951(A) (1995), and Arizona Rule of Procedure for Special Actions 10. Although we defer to Judge Pogson's factual findings, we independently review his legal conclusions. *See PFS v. Indus. Comm'n,* 191 Ariz. 274, 277, 955 P.2d 30, 33 (App. 1997).

III.

¶15 The claimant presents three questions for review: (1) Did Judge Pogson err when he denied the claimant's request for hearing based on the biased medical report of Dr. Maric? (2) Did Safeway wrongfully terminate the claimant? (3) Does the claimant's industrial injury continue to assist in the deterioration of his well-being and health status? We address each question below.

IV.

¶16 The claimant's first argument concerns the introduction and consideration of Dr. Maric's IME report. In his IME report issued January 29, 2003, Dr. Maric concluded that the claimant was stationary without impairment, and he questioned the claimant's eagerness to return to work. Additionally, Dr. Maric referred to a surveillance video in which the claimant purportedly loaded groceries, bent and twisted easily, and lifted a suitcase without apparent difficulty.

¶17 Although Judge Dessaint may have considered Dr. Maric's IME report prior to issuing her decision, this court can no longer consider the appropriateness of Judge Dessaint's award; that award became final and unappealable when the claimant failed to timely protest Judge Dessaint's decision upon review.

¶18 Here, we consider only Judge Pogson's award and decision upon review, which were not based on Dr. Maric's report or any other medical information that Judge Dessaint may have considered. Rather, Judge Pogson's award states, in relevant part, as follows:

> 1. This matter has already been litigated. The last proceeding ended December 2003. The applicant did not seek review by the Court of Appeals but instead filed a proceeding with the Maricopa County Superior Court. Although applicant styles his most recent request as a "Reopening", there was no Petition to Reopen filed and there is nothing in his documents which, even if taken to be true, would support the processing of a reopening petition by the Claims Division of the Industrial Commission.
>
> 2. I find that the Commission is without jurisdiction to consider applicant's Request for Hearing dated December 20, 2004 for the reasons set forth in Safeway's counsel's letter of January 4 [sic], 2005.

¶19 Judge Pogson's decision was appropriate. An Industrial Commission of Arizona (ICA) award becomes final and unappealable after thirty days have passed from the date of mailing of a decision upon review. § 23-943(H). Here, despite the obvious notice in the decision upon review that directed the claimant to "apply to the Arizona Court of Appeals" if he was dissatisfied,[1] the claimant failed to timely seek special action relief from this court.

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[1] Pursuant to A.R.S. § 23-943(H), each decision upon review issued must notify the parties that they can seek review from the court of appeals if they are dissatisfied. Accordingly, every ICA decision upon review includes the following language:

> **NOTICE:** Any party dissatisfied with the Decision Upon Review may apply to the Arizona Court of Appeals, Division One, 1501 W. Washington, Phoenix, Arizona 85007, for a review of the lawfulness of the decision pursuant to the provisions of Arizona Revised Statutes, section 12-120.21B. and section 23-951A. See also, Arizona Revised Statutes,

(Continued on following page)

¶20 Even if this court considered the claimant's complaint or "administrative review" before Judge Jones to be a timely but misfiled petition for special action review, the claimant abandoned any possibility of salvaging a timely petition for review when Judge Jones dismissed the complaint and the claimant no longer pursued the matter.

V.

¶21 We next address the claimant's wrongful termination argument. Although a workers' compensation recipient may file suit for retaliatory wrongful discharge against a former employer in superior court, *see* A.R.S. § 23-1501(3)(c)(iii) (Supp. 2005), a claim for wrongful discharge cannot be filed with the ICA. As the court explained in *Kaibab Industries v. Industrial Commission,* 196 Ariz. 601, 607, ¶ 17, 2 P.3d 691, 697 (App. 2000), "[u]nlike a court of general jurisdiction, the Commission['s] . . . jurisdiction is limited to questions pertaining to the worker's compensation law. . . ." *See also Rios v. Indus. Comm'n,* 120 Ariz. 374, 376, 586 P.2d 219, 221 (App. 1978). Accordingly, we cannot address the claimant's wrongful termination argument in this decision on review.

VI.

¶22 Finally, we consider the claimant's argument that reopening is justified because his October 11, 2002 industrial

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Vol. 17B, Rule 10, Rules of Procedure for Special Actions. This Decision Upon Review shall be final unless an application is made within thirty (30) days of the mailing of this Decision to the parties. Arizona Revised Statutes section 23-943H.

injury continues to assist in the deterioration of his well-being and health status. This argument necessitates our consideration of the requirements for reopening a closed claim.

¶23 We reiterate that we are reviewing only Judge Pogson's dismissal of the claimant's request for hearing, which arose out of Judge Dessaint's October 29, 2003 award. We are not reviewing the claimant's February 10, 2005 request for hearing, which does not appear to have been resolved before the ICA. It appears, however, that the claimant believes that he has demonstrated justification for the reopening of his claim.[2] Accordingly, for the sake of substantial justice, we address the claimant's reopening argument below.

¶24 A claimant cannot reopen a claim by attacking the validity of a prior, final award. *See Phoenix Cotton Pickery v. Indus. Comm'n,* 120 Ariz. 137, 139, 584 P.2d 601, 603 (App. 1978). A claimant can only reopen a closed claim by showing a new, additional, or previously undiscovered temporary or permanent condition that is causally related to the industrial injury. *Stainless Specialty Mfg. Co. v. Indus. Comm'n,* 144 Ariz. 12, 16-19, 695 P.2d 261, 265-68 (1985); *see* A.R.S. § 23-1061(H) (Supp. 2005).

¶25 Moreover, a petition to reopen must include a physician's Statement demonstrating some new, additional, or previously undiscovered condition. § 23-1061(H);

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[2] The claimant's letter dated January 27, 2005, which responded to counsel's January 24, 2005 letter objecting to hearing, suggested that reopening was appropriate because of the allegedly newly discovered surveillance video, the claimant's continued physical deterioration, his heart problem, and Dr. Maric's interpretation of the surveillance video.

see Ariz. Admin. Code R20-5-133.B ("A claimant shall provide to the Commission a copy of a medical report supporting the disability or condition justifying the re-opening of the claim."); *see also Blickenstaff v. Indus. Comm'n,* 116 Ariz. 335, 339, 569 P.2d 277, 281 (App. 1977) ("[I]n order for a physician's report to be sufficient under [the previous version of § 23-1061(H)], it must contain sufficient medical facts which, if true, would constitute a prima facie showing of entitlement to relief.").

¶26 Both the claimant's November 30, 2004 petition to reopen and his December 20, 2004 request for hearing fail to show *prima facie* evidence of entitlement to reopening. The surveillance video, Dr. Maric's interpretation of that video, the claimant's purportedly worsening heart condition, and the continual decline of the claimant's sense of well-being do not create a new, additional, or previously undiscovered condition that is causally related to the October 11, 2002 industrial injury.

¶27 Likewise, the medical expert's statement that the claimant attached to his November 30, 2004 petition is the statement by Mr. Grepling that the claimant's condition has not changed. This statement was obviously insufficient to meet the requirement that a claimant include a physician's statement demonstrating some new, additional, or previously undiscovered condition. *See generally Arizona Workers' Compensation Handbook* § 11.2.6.1, at 11-11 (Ray J. Davis et al. eds., 1992).

VII.

¶28 For the foregoing reasons, we affirm the award and decision upon review.

/s/ Philip Hall
PHILIP HALL, Presiding Judge

CONCURRING:

/s/ Lawrence F. Winthrop
LAWRENCE F. WINTHROP, Judge

/s/ Patricia K. Norris
PATRICIA K. NORRIS, Judge

(4)

No. 06-540

FILED
JAN 18 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

WACLAW M. TROJANEK,

Petitioner,

vs.

SAFEWAY INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals, State Of Arizona, Division One

PETITION FOR REHEARING

WACLAW M. TROJANEK
4428 W. Cholla
Glendale, Arizona 85304
602-938-8522

PETITION FOR REHEARING

STATEMENT OF THE CASE

Petitioner Employee Waclaw M. Trojanek sustained an industrial injury to his lower back on October 11, 2002. His claim for benefits was accepted by the self-insured employer, Safeway Stores Inc. by a notice of claim status dated October 28, 2002, disability and medical benefits until February 15, 2003.

Safeway Inc. has employed Petitioner Waclaw M. Trojanek for 30 years. Petitioner has exemplified a stellar career as Meat cutter/Manager, receiving numerous accolades and awards for exceptional performance from leadership. Petitioner maintained a flawless attendance record for 30 years. Petitioner has never claimed to have had any lower back pain or back injury prior to the accident on October 11, 2002.

Petitioner initially injured himself on the job on October 11, 2002, between 9:00 a.m. and 10:00 a.m. while working as a meat cutter for Safeway Inc. While cutting meat on the meat saw, the Petitioner picked up the cut meat and turned to the left stepping off the safety mat. Petitioner immediately felt a sharp, electric pain like shock that traveled throughout his body starting from his lower back then throughout the rest of his body. Petitioner was instructed to attend physical therapy and rehabilitation for comprehensive lower back rehabilitation therapy by Dr. Zoran Maric, the Industrial Physician. After a few weeks of therapy, there was still no improvement. The only test that was approved by Safeway Industrial was an M.R.I. on Petitioner's lower back.

On January 29, 2003 Petitioner had a follow-up visit with Dr. Zoran Maric, MD. Petitioner's wife, Sophie Trojanek, and Ms. Jaclyn Rogers, Safeway Inc. Industrial case worker, were all present in the examination room. Petitioner briefed Dr. Maric about the pain in his lower back being much worse after the physical therapy. Dr. Maric stated, "Everyone in America has a bulging disk. It should not hurt so much." With that Dr. Maric closed the Petitioner's folder and walked out of the room in disgust. Amazed by Dr. Maric's unprofessional behavior, Petitioner asked Ms. Jaclyn Rogers what was the next course of action to take. Ms. Rogers suggested contacting Liz Williams at Safeway Industrial Office for further guidance. Ms. Liz Williams was contacted later that day, and to this date, Petitioner has never received any guidance from Safeway's Industrial Office to include any assistance from Liz Williams.

Safeway Inc. and Safeway's Industrial Physician, Dr. Zoran Maric, closed the case on February 15, 2003, as Petitioner's lower back injury became worse.

Petitioner was not aware of his Termination from Employment until February 20, 2003. Yet he was asked to return to his Employment on February 15, 2003. Petitioner's Industrial Compensation ended on February 15, 2003. With all the stress from Petitioner's injury and lack of proper health care from the Safeway Industrial Doctor, Petitioner underwent double bypass open heart surgery on February 18, 2003. Petitioner was left to recuperate from lower back injury sustained on the job and open heart surgery without any income to provide for his family which was his wife and five children. Petitioner was left with no alternative but to contact the Industrial Commission of Arizona. The Judge failed to examine all reports.

She accepted the reports from the Industrial Doctor, Zoran Marci, and Safeway Inc. and closed the case.

Upon receiving documents from the Petitioner's closed case, it was then identified by the Petitioner of the existence of a surveillance tape made by Safeway Inc. The tape was used to assist Dr. Zoran Maric in his final report on the Petitioner. After his examination on January 29, 2003, Dr. Zoran Maric's report was vital for Safeway justifying Petitioner's termination of employment and termination of all benefits. Dr. Zoran Maric and Safeway Inc. misidentified and falsified the truth of Petitioner's physical abilities that are noted in the final report. The surveillance tape has been a major factor in closing this case. Nothing on the tape matched the reports by Dr. Zoran Maric and Safeway Inc.

Safeway Inc. made a surveillance tape of petitioner's daily activities. Safeway Inc. and Industrial Doctor Zoran Maric misidentified, lied, and falsified as to the contents of the tape. It was not the petitioner loading groceries into the back of the van while bending and twisting. It was Petitioner's 14-year-old son. Petitioner is only holding a loaf of bread and a bag of potato chips. While at the airport, Petitioner lifted a garment bag, not a suitcase. The surveillance tape was the final report in the decision to take away Petitioner's compensation.

In addition to firing the Petitioner on February 15, 2003, Petitioner is suing Safeway Inc. for $45 million for all the unnecessary stress Safeway Inc. caused dating from November 4, 1996. This started the last six years of Petitioner's employment. Mystery Shopper reported the Petitioner did not smile while working. Petitioner was on vacation 3,000 miles away at this time. This report lost the

Petitioner's stock option. Contributors to stress included age discrimination one day before his 50th birthday, Nationality Discrimination, and accusation of theft of one cup of coffee and two soda pops. With all the added stress, Petitioner underwent open heart double bypass surgery on February 18, 2003. Petitioner never received any compensation for his heart condition.

Petitioner is including the first M.R.I. dated October 17, 2002 and the last M.R.I. dated October 13, 2006.

The last M.R.I. states the Petitioner's condition is not getting better, it is getting worse and the Petitioner is recommending to have more tests. That is Industrial's responsibility. Petitioner sustained an injury on the job at Safeway Inc. on October 11, 2002. Safeway and Safeway's Industrial Doctor, Zoran Maric, closed Petitioner's case on February 15, 2003. After sustaining injury to lower back on the job working faithfully for Safeway Inc. for over 30 years, Petitioner should be receiving Disability Compensation and Medical Benefits for the rest of his life.

Petitioner is an American citizen, Father of 12 children, and a Husband who is unable to continue his role as a provider for his family, to include providing health insurance for his wife and children. If it weren't for his accident on October 11, 2002, at his employment, Petitioner would still be working for Safeway Inc. until he reached the age of 67. Disheartening is the fact that the Petitioner can no longer take advantage of the little things in life that he was able to do prior to his work-related injury on October 11, 2002. Petitioner is no longer part of the family outdoor activities with his children and no longer has the ability to be intimate with his wife at his young age. These issues are constant reminders of Safeway Inc.'s

Neglect as an Employer, and the constant stress the Petitioner faces every moment of his life.

REASONS FOR GRANTING PETITION FOR REHEARING

Reasons for the Supreme Court of the United States to Grant the Petition for Rehearing are: the Arizona Courts from Industrial Commission, the Court of Appeals, and Arizona Supreme Court Failed to do Justice to the Petitioner. None of the Petitions or Motions were granted. They were either dismissed or denied. If the Petitioner does not get justice in the highest Court, the United States Supreme Court, where does he get it? Petitioner is pleading the United States Supreme Court to review this case and grant the Petitioner a fair judgment, not be pushed around for over three years like a piece of trash in the field from one Arizona Court to another.

WACLAW M. TROJANEK
4428 W. Cholla
Glendale, AZ 85304

CERTIFICATION

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

WACLAW M. TROJANEK
4428 W. Cholla
Glendale, AZ 85304

[Logo]

Biltmore Advanced
Imaging Center

PATIENT NAME: TROJANEK, WAULAW [sic] M.

PATIENT #: 05-78-81

DOB: 08-06-55 AGE: M-47

REFERRING PHYSICIAN: RONALD M. LAMPERT, M.D.

EXAM: MRI OF THE LUMBAR SPINE: 10/15/02

CLINICAL HISTORY: A clinical history of left-sided pain has been provided.

COMPARISON: There are no previous studies available for comparison.

TECHNICAL: Sagittal T2 FSE, sagittal spine-echo T1, sagittal FSE proton density, axial oblique T1, and axial FSE T2 stack imaging was performed.

FINDINGS: The conus medullaris appears normal with respect to caliber, contour, and signal intensity and terminates at the level of the T12-L1 vertebral disk space. The marrow signal appears homogenous. Note is made of a congenitally small spinal canal.

T12-L1: Minor degenerative changes are seen within the facet joints. The intervertebral disk is unremarkable. No significant foraminal narrowing or compromise of the spinal canal is appreciated.

L1-2: Circumferential bulging in the intervertebral disk is appreciated eccentric to the left. Additionally, a superimposed broad-based protrusion of the intervertebral disk is seen eccentric to the left, extending into the left neural

foramen, resulting in a moderate narrowing. Minor degenerative changes are seen within the facet joints. The right neural foramen and the spinal canal appear patent.

L2-3: Minor circumferential bulging in the intervertebral disk is appreciated. Degenerative changes are noted within the facet joints. No significant foraminal narrowing or compromise of the spinal canal is identified.

L3-4: Circumferential bulging of the intervertebral disk is appreciated. Degenerative changes are seen within the facet joints. No significant foraminal narrowing or compromise in the spinal canal is appreciated.

[LOGO] SimonMed
See Tomorrow Today

Sun City
DIAGNOSTIC IMAGING REPORT

Patient: **Trojanek, Waclaw M**

Sex: M DOB: Aug. 6, 1947 Age: 59

Diag. Imaging #92006

Status: 1. Outpatient Stat

Referring Physician: James Grepling

Exam #193773 – **2006 Oct 13 – MRI LUMBAR SPINE W/O CONTRAST**

ADDENDUM TO MRI OF THE LUMBAR SPINE DATED 10/13/06

ADDENDUM: Comparison films are available from March 30, 2005. The disc protrusion at L4-5 appears new in comparison to the older study. Facet degenerative

changes are also present on the prior examination. Mid to distal abdominal aortic aneurysm was also present on the prior study, but complete characterization with ultrasound or CT would be recommended, as the anterior portion of the aneurysm is obscured.

JS/WL

dd: Oct. 17, 2006

Reported by: John Simon M.D.
Reported and electronically signed: John Simon M.D.

MRI OF THE LUMBAR SPINE

CLINICAL HISTORY: Low back pain and left leg pain.

TECHNIQUE: Sagittal T1, sagittal and axial T2 and axial gradient echo images were obtained.

FINDINGS: There is mild levoscoliosis of the lumbar spine. The alignment is otherwise normal. The marrow signal is normal. There are no compression fractures. The conus terminates normally at T12-L1 and demonstrates normal signal.

The L1-2 and L2-3 disc levels are unremarkable.

At L3-4, there is trace anterolisthesis and there is a mild annular bulge effacing the ventral thecal sac without central canal spinal stenosis or neural foraminal narrowing.

At L4-5, there is a small broad based posterior disc protrusion slightly eccentric to the right side resulting in marked compression of the thecal sac and moderate to marked central canal spinal stenosis. There is mild bilateral

neural foraminal narrowing and mild bilateral facet hypertrophy.

At L5-S1, there is a mild bulging disc without a focal disc protrusion, central canal spinal stenosis or neural foraminal narrowing. There is mild bilateral facet hypertrophy.

IMPRESSION:

1. Mild bulging disc at L3-4 and there is mild bilateral facet hypertrophy.

2. Small broad based disc protrusion at L4-5 slightly eccentric to the right side compresses the right ventral aspect of the thecal sac and results in moderate to marked central canal spinal stenosis and mild bilateral neural foraminal stenosis.

3. Mild bulging disc at L5-S1 and there is mild bilateral facet hypertrophy without central canal spinal stenosis or neural foraminal narrowing.

ADDITIONAL COMMENT: Note is made of an infrarenal abdominal aortic aneurysm which is incompletely imaged and has an approximate AP diameter of 3.3 cm and a transverse diameter of 3.4 cm. Correlation with abdominal CT or ultrasound is recommended.

JU:ap October 15, 2006

dd: Oct. 13, 2006

Reported by: John P. Uglietta M.D.
Reported and electronically signed: John Simon M.D.

NOTICE: This information has been disclosed to you from records protected by Federal and State confidentiality rules (42CFR Part 2 and/or ARS 36-3661). The rules

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